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[PUBLIC VERSION]

October 11, 2002

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OCT 11 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte Meeting in CC Docket Nos. 96-98, 98-147, 01-338, 02-33**

Dear Ms. Dortch:

Pursuant to Section 1.120(b)(2) of the Commission Rules, this letter is to provide notice in the above-captioned proceedings of an *ex parte* meeting. On October 10, 2002, the undersigned accompanied Walter Blackwell (President, Association of Communications Enterprises ("ASCENT")), David Gusky (Executive Director, ASCENT), Gordon Martin (Chairman, ASCENT), Norman Mason (President & CEO, CCI Telecom), Bill Capraro, Jr. (CEO, Cinco Communications), Ron Harden (Executive Vice President, Network Services, Grande Communications), Robert Hale, Sr. (Chairman of the Board, Granite Communications), Ron Contrado (President, Homisco/Voicenet), Jerry Finefrock (Vice President, LDML Telecommunications), J. Sherman Henderson (President & CEO, Lightyear Communications), Ron Hughes (Chief Operating Officer, VarTec Telecom), Steven E. Peters (Vice President, Product Development, VarTec Telecom) and D. Gregory Smith (CEO, Z-Tel Communications) met separately with Chairman Michael Powell and his Legal Advisor Christopher Libertelli, Commissioner Michael Copps and his Mass Media Legal Advisor Alexis Johns, Commissioner Kevin Martin and his Senior Legal Advisor Daniel Gonzalez, and Matthew Brill (Senior Legal Advisor to Commissioner Kathleen Abernathy).

In the context of these meetings the attendees provided information and views summarized in the attached document, which was provided at the meeting. Pursuant to Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459 (2002), LDML telecommunications requests that the information contained on page 6 of the document titled "LDML Talking Points" not be subject to public inspection. This page has been separated from

Handwritten signature and initials.

Marlene H. Dortch, Secretary

October 11, 2002

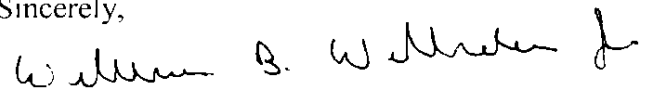
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the rest of the presentation and is provided as Exhibit A attached hereto. The remainder of the presentation is provided as Exhibit B. Exhibits C and D contain other materials that were distributed during the meeting.

Pursuant to Section 1.1206(a)(i) of the Commission's Rules, an original and one copy for each docket of this letter are being submitted to the Secretary for filing in the above-referenced proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "William B. Wilhelm, Jr.", is written over a horizontal line.

William B. Wilhelm, Jr.

Enclosures

cc Chairman Michael Powell  
Commissioner Michael Copps  
Commissioner Kevin Martin  
Matthew Brill, Sr. Legal Advisor  
to Commissioner Kathleen Abernathy  
Daniel Gonzalez, Sr. Legal Advisor  
to Commissioner Kevin Martin  
Alexis Johns, Mass Media Legal Advisor  
to Commissioner Copps  
Christopher Libertelli, Legal Advisor  
to Chairman Michael Powell  
Walter Blackwell  
Bill Capraro, Jr.  
Ron Contrado  
Jerry Finefrock  
David Gusky  
Robert Hale, Sr.  
Ron Harden  
L. Sherman Henderson  
Ron Hughes  
Gordon Martin  
Norman Mason  
Steven Peters  
D. Gregory Smith

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EXHIBIT A

CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE

[REDACTED]

“LDMI Talking Points”

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CONFIDENTIAL INFORMATION -

**FILED UNDER SEAL  
NOT FOR PUBLIC  
DISCLOSURE**

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CONFIDENTIAL

Notice of *Ex Parte* Meeting in CC Docket Nos. 96-98,  
98-147, 01-338, 02-33

EXHIBIT A

“LDMI Talking Points”

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**EXHIBIT B**

**“LDMI Talking Points”**

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# LDMI Talking Points

## FCC 10/10/02

- LDMI Telecommunications: ICP headquartered in Detroit area
- Founded 10 years ago: started from scratch
- Founder & his mother re-mortgaged their homes to raise the starting capital
- From the beginning: facilities-based long-distance carrier
- Has grown to about \$100/million annual revenue
- Is now the largest telecom carrier headquartered in Michigan
- Serves long-distance customers throughout the Midwest – but 75% of revenues derived from Michigan
- Backed by VC's: PNC Equity; Primus Venture Partners; CID Equity Partners; Wind Point Partners
- LDMI is the most successful telecom company these VCs invested in

# Customer Commitment & Michigan Geographic Coverage

- LDMI serves both business & residence; focus is on *small business customers*:
  - Small business is the overlooked customer segment
  - Small business growth is the economic driver of the entire economy
- Re: Long-distance – LDMI serves every exchange in Michigan, both Bell & Independent
- Re: Local – LDMI serves every Ameritech exchange in Michigan (few if any other CLECs in Michigan do that)

# The LDMI Financial Philosophy

- The great majority of CLECs have gone bankrupt
- The principal reason for CLEC bankruptcy has been huge capital expenditures for network build-outs, in advance of sufficient customer (CLEC) penetration
- LDMI did not over-invest; LDMI did not overspend
- LDMI has been EBITDA positive for last eight quarters
- LDMI utilizes the “smart build” strategy: Grow first with UNE-P, then convert to facilities-based CLEC operation in those wire centers which have reached economic crossover



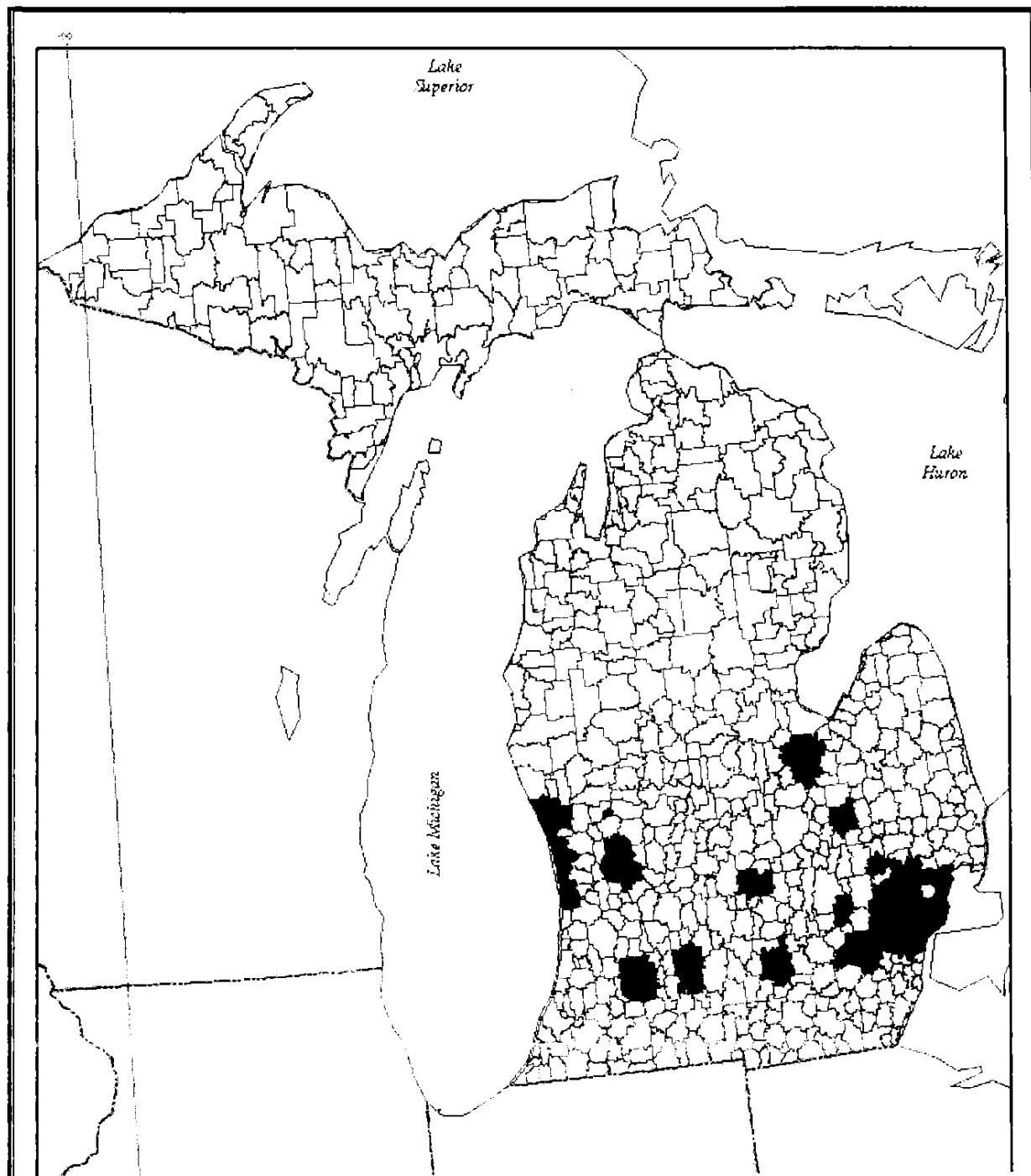
# If the FCC Eliminates Business UNE-P...

- Eliminating UNE-P will punish a company (LDMI) that has followed exactly the right economic strategy to cost-effectively invest and grow to provide local telephone service to hundreds of thousands of customers
- Eliminating business UNE-P will punish the customer segment (small business) that is most needed to get the economy going, and is most in need of savings in their local telephone expenses
- Eliminating UNE-P will punish customers in the more rural areas, who are now enjoying major local phone savings with UNE-P, but for whom facility-based local competition cannot be economically proven in for years or decades

# Michigan CLEC Colocations

(Shown  
In Red)

In The Rest Of  
Michigan,  
Facilities-Based  
CLEC  
Competition  
Does Not  
Exist.



# The UNE-P Conundrum

- As of 8/02, LDMI had 53,984 UNE-P lines in service in Michigan, spread among over 330 Ameritech Michigan wire centers.
- But only a handful of those 330 wire centers currently cost-justify facilities based operation.
- Assuming the completion of financing, LDMI will soon be able to establish facilities-based CLEC operation in roughly 18 of those wire centers.
- But if UNE-P is eliminated, what happens to the rest? What happens to competition for all the customers in all those other wire centers around Michigan?

# If the FCC Eliminates Business UNE-P...

- Eliminating UNE-P will punish a company (LDMI) that has followed exactly the right economic strategy to cost-effectively invest and grow to provide local telephone service to hundreds of thousands of customers
- Eliminating business UNE-P will punish the customer segment (small business) that is most needed to get the economy going, and is most in need of savings in their local telephone expenses
- Eliminating UNE-P will punish customers in the more rural areas, who are now enjoying major local phone savings with UNE-P, but for whom facility-based local competition cannot be economically proven in for years or decades

# Please Don't Do It!

- Without UNE-P, no small CLEC will ever be able to grow into a large, profitable CLEC.
- They will never get the economics needed to reach economic crossover in the various central offices in each state.
- UNE-P is the key to insuring true local competition for the future.

## **EXHIBIT C**

**“True Fiction: SBC’s Recent Assertions to Media & Regulators”**

# True Fiction:

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## SBC's Recent Assertions To Media & Regulators

- SBC's profits "are falling like a rock" <sup>1</sup>
- SBC's profit problem is worst in Ameritech region<sup>2</sup>
- Ameritech profits particularly bad in MI & OH <sup>3</sup>
- Cause of profit problem is "below-cost" "UNE-P" wholesale prices to competitors, which are "nuts" <sup>4</sup>
- UNE-P rates must be more than doubled <sup>5</sup>
- Unless SBC gets the huge UNE-P rate hikes it wants, it will fire many employees <sup>6</sup>

1 MiACT, 8/29/02, and The Digest, 8/29/02, quoting SBC President Ed Whitacre's statement to the Detroit Free Press.

2 Cleveland Plain Dealer, 8/27/02; Detroit Free Press 8/31/02; Chicago Tribune, 9/4/02.

3 TR's State Newswire, 8/30/02; SBC's William Daley, letter to editor of Cleveland Plain Dealer, 9/17/02.

4 Crain's Detroit Business, 9/2/02, quoting Ed Whitacre of SBC.

5 Chicago Tribune, 9/4/02.

6 Detroit Free Press, 8/31/02; Chicago Tribune, 9/16/02.

**None of the above SBC statements is true.**

## The Fiction:

- SBC's profits "are falling like a rock".

## The Facts:

- SBC is one of the 30 largest Fortune 500 firms.
- For calendar year 2001, SBC had a Profit Margin on revenues of 15.8%. The other top-30 companies had an average Profit Margin of 4.6%.
- For 2<sup>nd</sup> Quarter 2002 (ending 6/30/02), SBC had a profit margin of **16.8%**. The other top-30 companies had an average Profit Margin of **2.3%**.



## The Fiction:

- SBC's profit problem worst in Ameritech region.
- Ameritech profits particularly bad in MI and OH.

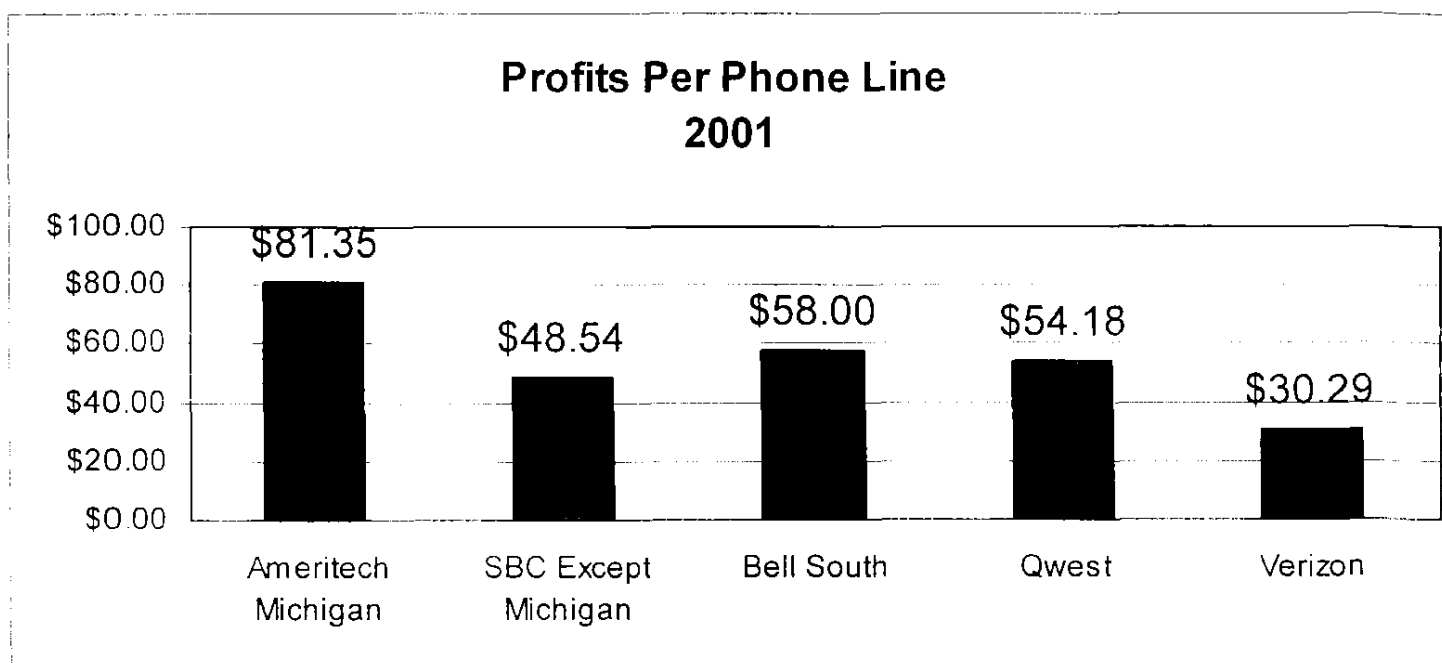
## The Facts:

- Ameritech-region profits higher than rest of SBC.
- Ameritech profits are dramatically high in both Michigan and Ohio.
- Facts can be proven by reviewing the data which SBC is required to file annually with FCC:  
“ARMIS” database (see following slides)

## Net Income Per Phone Line - Michigan Comparison

Company	2001
Ameritech Michigan	\$81.35
SBC Except Michigan	\$48.54
Bell South	\$58.00
Qwest	\$54.18
Verizon	\$30.29

Data Sources: FCC ARMIS 4302, Accounts 178 (Net Income), 4308, Row 910 (Total Access Lines)

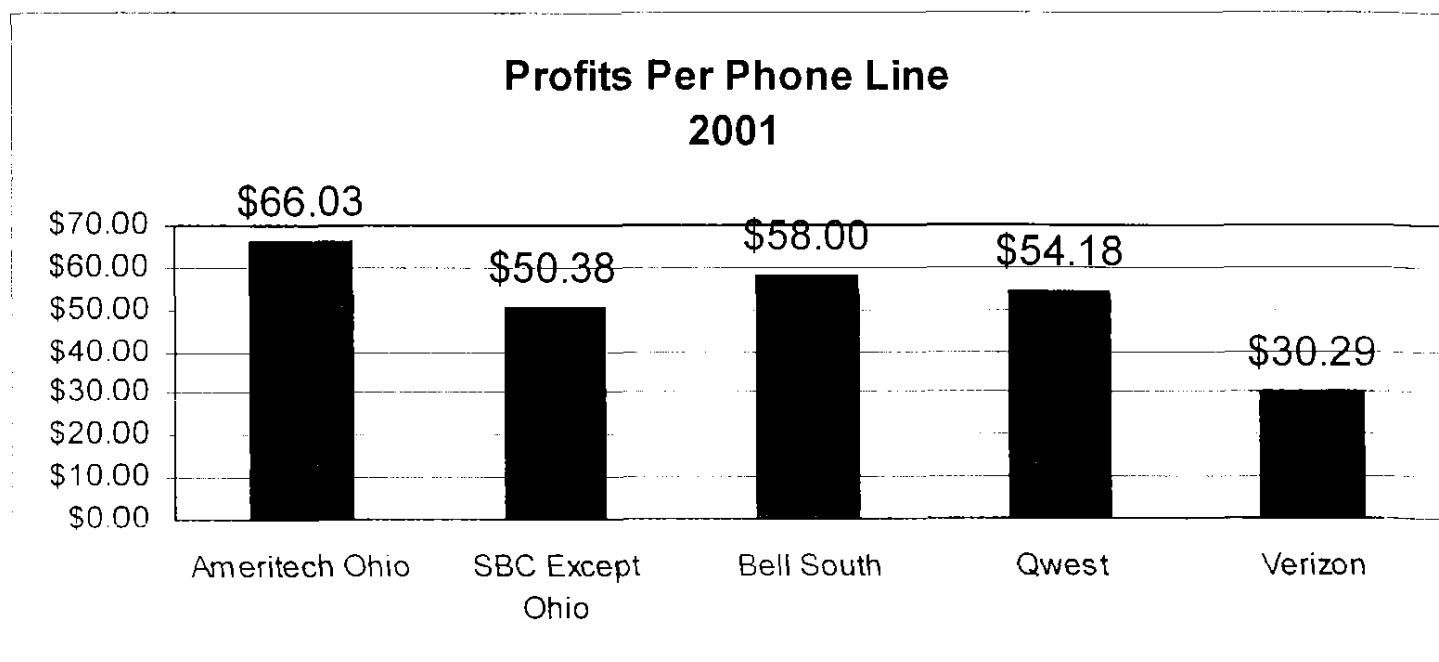


After-tax net income per telephone (per "access line"), calendar year 2001, for Ameritech Michigan as compared to the rest of SBC and the Baby Bells. Ameritech Michigan's profits are dramatically higher than the rest of SBC, and the rest of the RBOCs.

## Net Income Per Phone Line - Ohio Comparison

Company	2001
Ameritech Ohio	\$66.03
SBC Except Ohio	\$50.38
Bell South	\$58.00
Qwest	\$54.18
Verizon	\$30.29

Data Sources: FCC ARMIS 4302, Accounts 178 (Net Income), 4308, Row 910 (Total Access Lines)

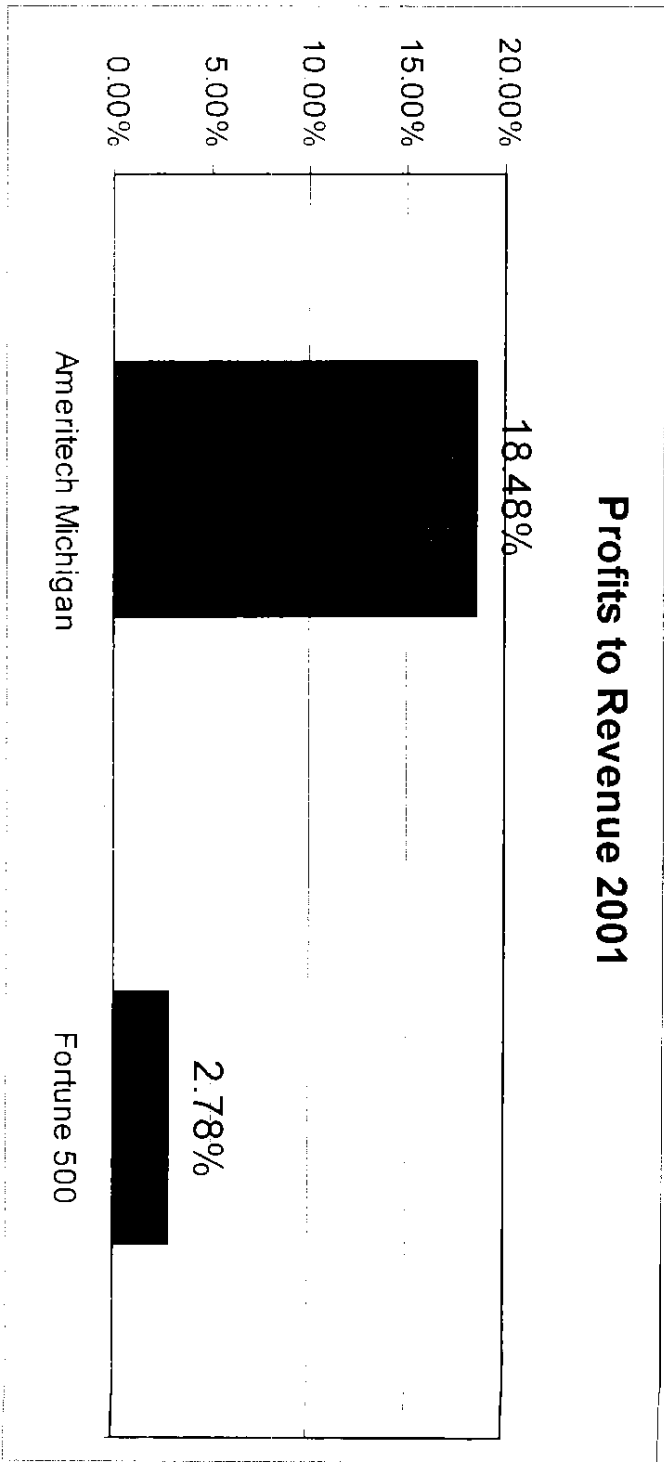


After-tax net income per telephone (per "access line"), calendar year 2001, for Ameritech Ohio as compared to the rest of SBC and the Baby Bells. Ameritech Ohio's profits are significantly higher than the rest of SBC, and the rest of the RBOCs.

# Profits to Revenue - Michigan Comparison

Company	2001
Ameritech Michigan	18.48%
Fortune 500	2.78%

Ameritech Data Sources: FCC ARMIS 4302, Accounts 178 (Net Income), 48 (Total Operating Revenue)

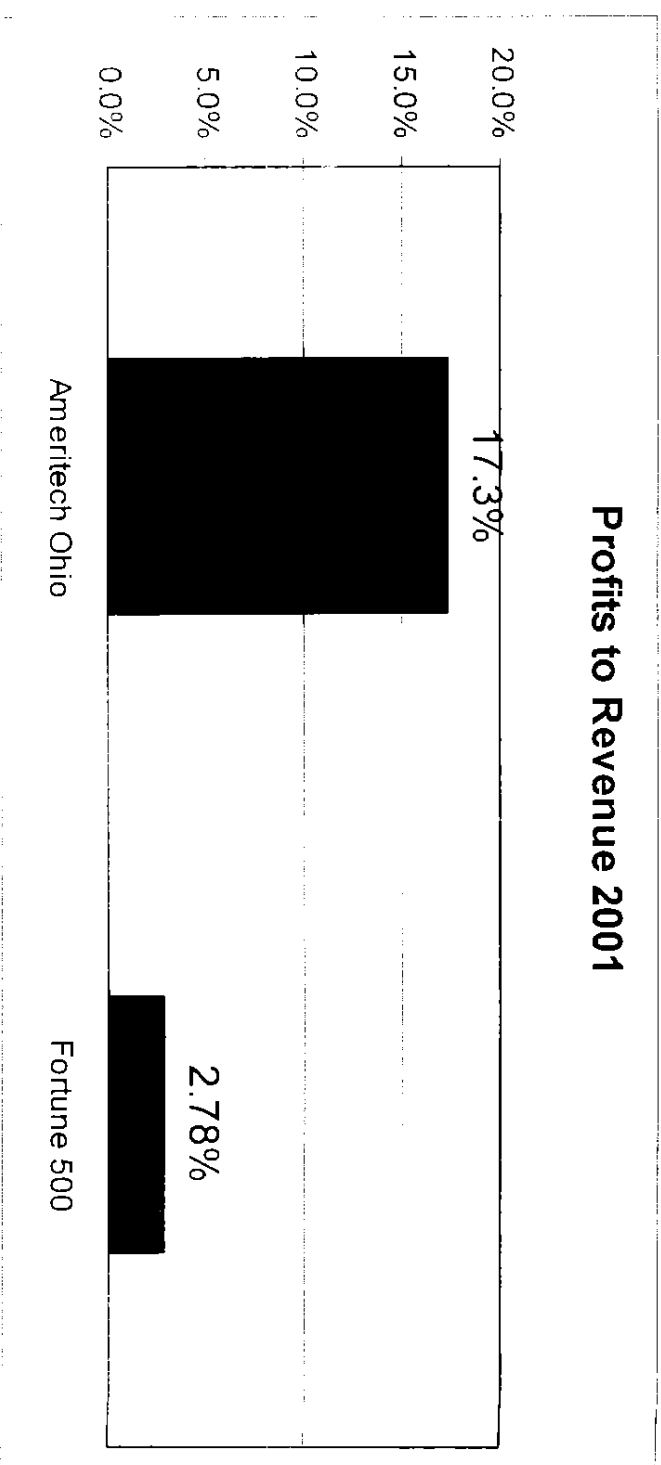


After-tax net income as a percentage of revenues, calendar year 2001, for Ameritech Michigan as compared to the overall results of the Fortune 500.

# Profits to Revenue - Ohio Comparison

Company	2001
Ameritech Ohio	17.3%
Fortune 500	2.78%

Ameritech Data Sources: FCC ARMS 4302, Accounts 178 (Net Income), 48 (Total Operating Revenue)

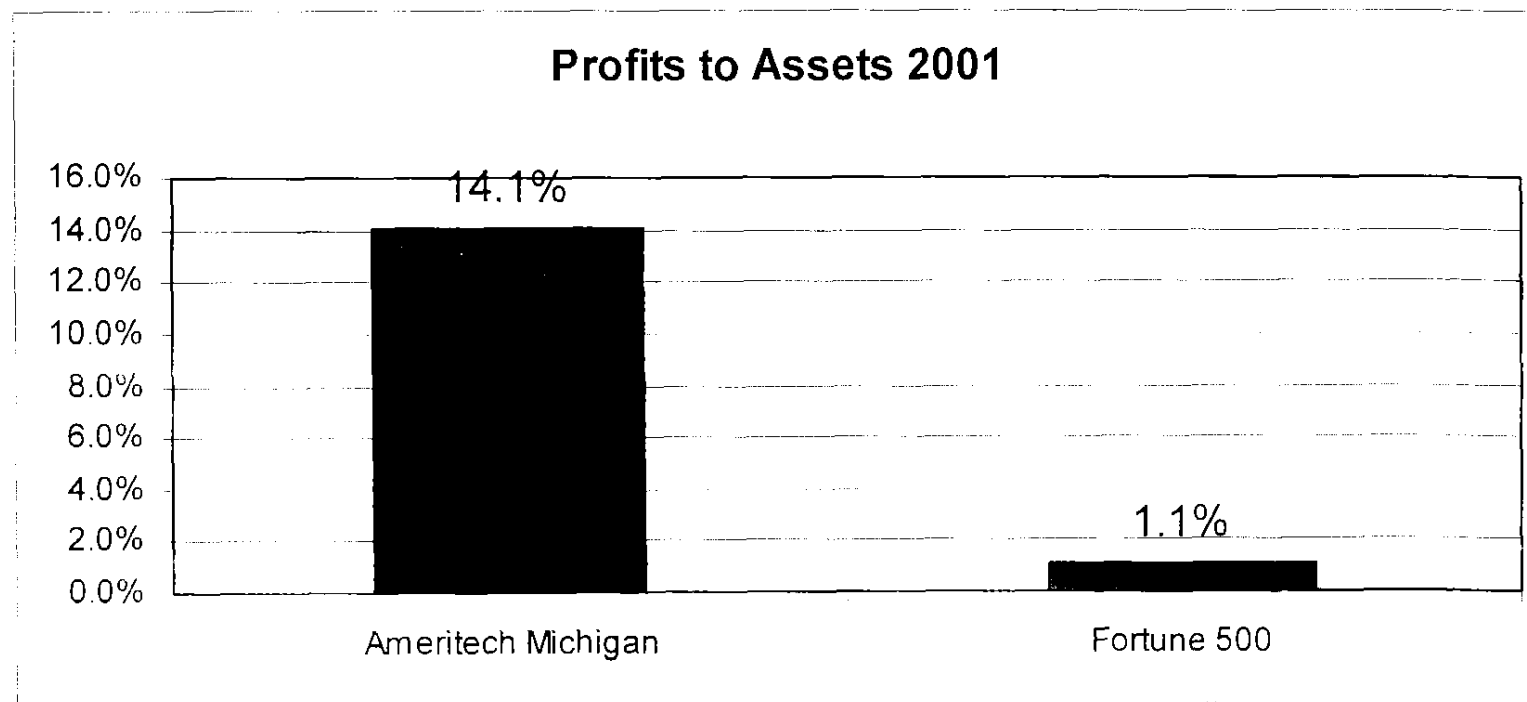


After-tax net income as a percentage of revenues, calendar year 2001, for Ameritech Ohio as compared to the overall results of the Fortune 500.

## Profits to Assets - Michigan Comparison

Company	2001
Ameritech Michigan	14.1%
Fortune 500	1.1%

Ameritech Data Sources: FCC ARMIS 4302, Accounts 178 (Net Income), 511 (Total Assets)

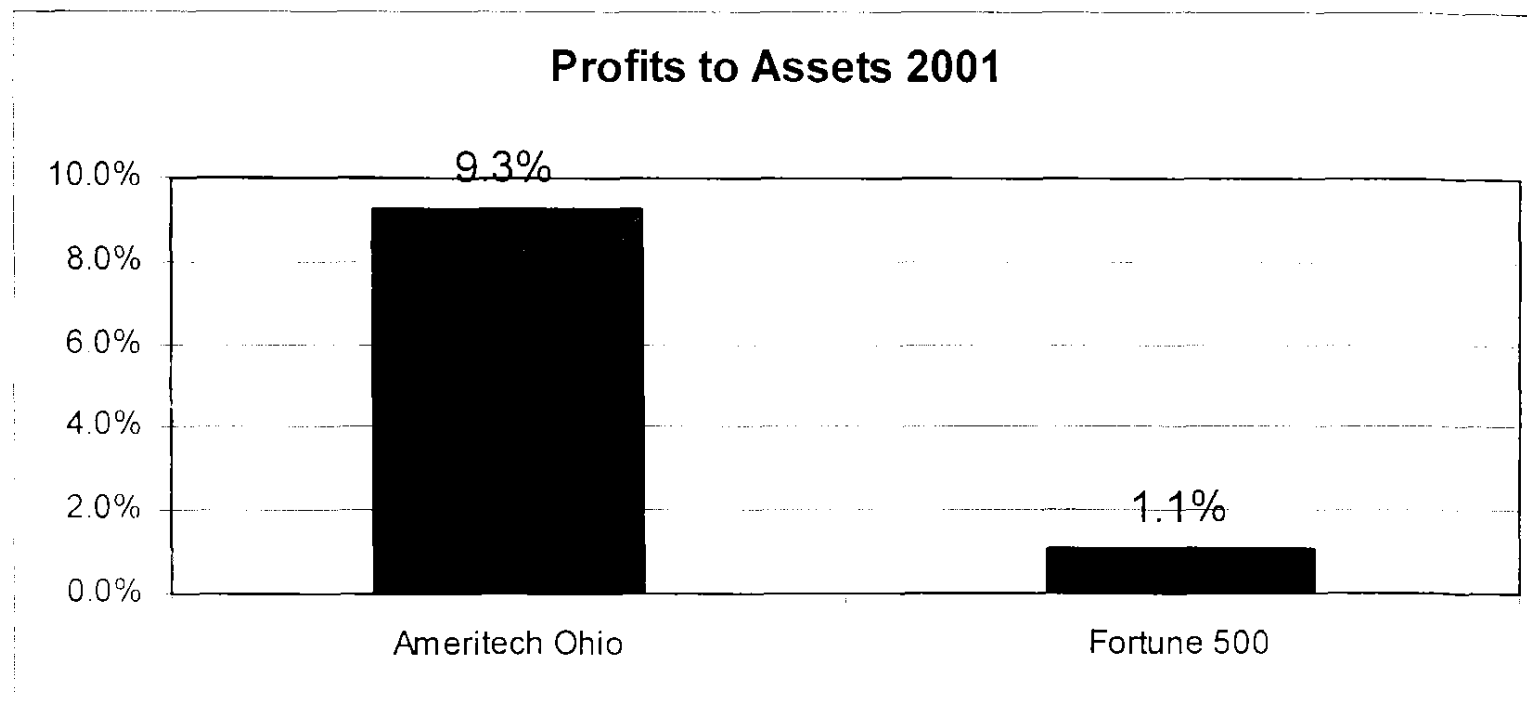


After tax net income as a percentage of assets, calendar year 2001, for Ameritech Michigan as compared to the overall results of the Fortune 500.

## Profits to Assets - Ohio Comparison

Company	2001
Ameritech Ohio	9.3%
Fortune 500	1.1%

Ameritech Data Sources: FCC ARMIS 4302, Accounts 178 (Net Income), 511 (Total Assets)



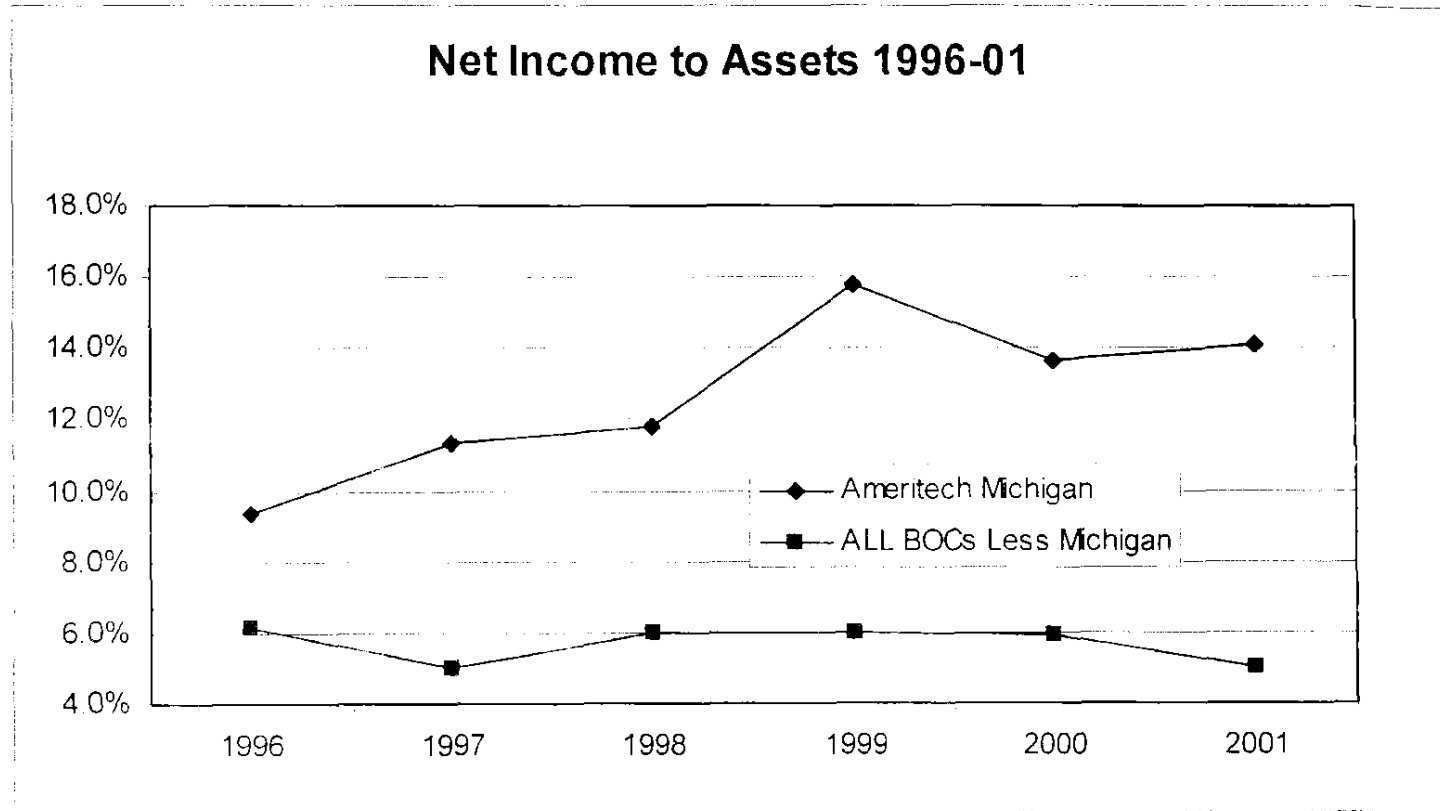
After-tax net income as a percentage of assets, calendar year 2001, for Ameritech Ohio as compared to the overall results of the Fortune 500.

## Net Income / Assets - Michigan Comparison

Company	1996	1997	1998	1999	2000	2001
Ameritech Michigan	9.3%	11.4%	11.8%	15.8%	13.7%	14.1%
<b>ALL BOCs Less Mich</b>	6.1%	5.0%	6.0%	6.0%	5.9%	5.0%

Source: FCC ARMIS 4302 (1996 - 2001), Account 178 (Net Income - Income Statement Section) / Account 511 (Total Assets - Liabilities)

Calculation: Y1996: Net Income 1996 / Total Assets 1996, etc.



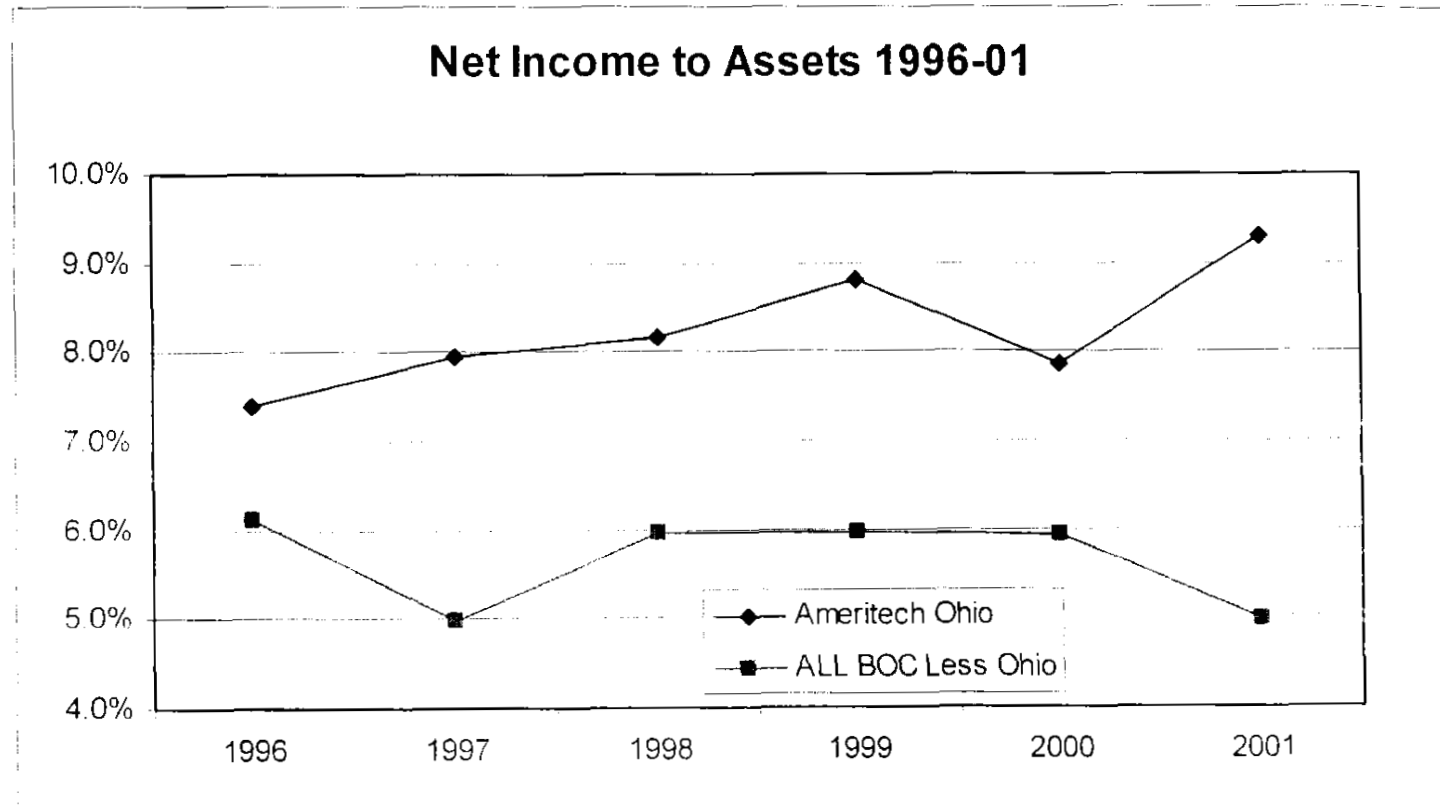
For the years 1996 through 2001, net income as a percentage of assets for Ameritech Michigan has been substantial and trending upward, as contrasted with the results for "All BOCs Less Michigan" (Verizon, SBC, the other Ameritech companies, Bell South and Qwest) whose results have not been as high, and have been trending lower.



## Net Income / Assets - Ohio Comparison

Company	1996	1997	1998	1999	2000	2001
Ameritech Ohio	7.4%	8.0%	8.2%	8.8%	7.9%	9.3%
ALL BOC Less Ohio	6.1%	5.0%	6.0%	6.0%	5.9%	5.0%

Source: FCC ARMIS 4302 (1996 - 2001), Account 178 (Net Income - Income Statement Section) / Account 511 (Total Assets - Liabilities)  
 Calculation: Y1996: Net Income 1996 / Total Assets 1996, etc.



For the years 1996 through 2001, net income as a percentage of assets for Ameritech Ohio has been substantial and trending upward, as contrasted with the results for "All BOCs Less Ohio" (Verizon, SBC, the other Ameritech companies, Bell South and Qwest) whose results have not been as high, and have been trending lower.

## The Fiction:

- UNE-P and other “TELRIC” based wholesale services, are priced below cost.

## The Facts:

- TELRIC pricing came out of '96 Telecom Act
- When SBC and other RBOCs claimed to FCC that TELRIC resulted in below-cost prices, the FCC said this was nonsense.
- SBC and the RBOCs appealed to Supreme Court: Supreme Court said claim that TELRIC resulted in below-cost prices was nonsense.
- SBC and RBOCs are now appealing to state commissions, and to Congress!

# Supreme Court Speaks on TELRIC and UNE-P Pricing

- TELRIC is not a confiscatory pricing mechanism.
- Comparisons offered by SBC and the RBOCs were “spurious”.
- Numbers assumed by the RBOCs are “clearly wrong”.
- RBOC argument that pricing was below cost was “patently misstated”.

-- US Supreme Court, Verizon et al v. FCC,  
122 S.Ct. 1646[May 2002].

# Supreme Court Speaks on TELRIC and UNE-P Pricing (cont.)

- “If leased elements [of telephone service] were priced according to imbedded costs [as the RBOCs wish], the incumbents could pass these inefficiencies to competitors in need of their wholesale elements, and to that extent defeat the competitive purpose of forcing efficient choices on all carriers whether incumbents or entrants. *The upshot would be higher retail prices consumers would have to pay...*the FCC was reasonable to prefer TELRIC over alternative fixed-cost schemes that preserve home-field advantages for the incumbents.”

-- US Supreme Court, Verizon et al v. FCC,

122 S.Ct. 1646[May 2002]. Emphasis added.

## The Fiction:

- TELRIC-based “UNE-P” rates must be more than doubled.

## The Facts:

- In Michigan, SBC/Ameritech says it wants to increase UNE-P rates from the current \$14/month to a new figure of \$34/month.
- But SBC/Ameritech sells retail local phone service in Michigan for \$14 - \$15/month.
- So if SBC gets its way, the wholesale rate to competitors will be over twice the retail rate!
- Only an arrogant monopoly would think they could get away with that!

## The Fiction:

- TELRIC-based “UNE-P” rates must be more than doubled.

## The Facts:

- Statement by the National Association of Regulatory Utility Commissioners (NARUC) on 9/27/02:

“Despite the Supreme Court’s finding that current pricing rules provide the [Bells] with an opportunity to earn a reasonable profit on their investments, they continue to argue on the Hill and at the FCC that wholesale prices for UNEs are confiscatory, below cost, and illegal... Given the trends in [Bell] returns [profits] since the 1996 act and the onset of UNE-P, this argument is hard to comprehend.”

-- Letter signed by Commissioner Smith of Oregon, chair of NARUC telecom committee, and Commissioner Robert Nelson of Michigan, the vice-chair.

## The Fiction:

- Unless SBC gets the huge UNE-P rate hikes it wants, it will fire many employees.

## The Facts:

- SBC never intended to to get the state commissions or Congress or the FCC to quickly double UNE-P rates, so it wouldn't carry through on threat to fire many employees.
- On 9/27/02, SBC announced it was firing 11,000 workers – only weeks after it issued its threat. Didn't wait for a rate hike; never intended to.

# Comments on SBC's Actions

- SBC's firing of 11,000 workers: "other Bell companies don't appear to be increasing their layoffs at this point... Mr. Whitacre said the job cuts will be heaviest in the Midwest [Ameritech]... the move is likely to further strain relations with regulators in the Midwest, where they are already frayed by service problems that plagued the company and its customers after SBC bought Ameritech..." [layoffs are] "underscoring how regional Bell companies are becoming increasingly vulnerable to the weak economy and growing competition... industry critics say the regional Bells have spent more time and energy complaining about regulation and fending off rivals than they have reorganizing their own businesses to better compete..."

-- Wall Street Journal, 9/27/02



# Comments on SBC, (cont.)

- [SBC's] "Whitacre got this one wrong. Revenues aren't going down because of UNE-P. They're going down because of competition... A lifelong monopolist, [Whitacre] hasn't known competition until now. It's no surprise he doesn't like it.. He feels the pinch of competition and figures it's someone else's fault that SBC is hurting...he figured he could get the U.S. Supreme Court to knock down the states' regulations and give SBC more control over how much it could charge [but] the justices backed the states...Whitacre rode into town to blame regulators for SBC's troubles. But he should mostly blame himself."

-- Article in Chicago Tribune, 9/29/02, by David Greising, entitled  
"Whining by SBC's Whitacre has hollow ring".

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This presentation prepared by Jerry Finefrock, LDMI Telecommunications, 8801  
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**EXHIBIT D**

**ASCENT Literature**